

ESTTA Tracking number: **ESTTA361001**Filing date: **08/02/2010**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Sensible Foods, LLC		
Entity	LLC	Citizenship	CA
Address	P.O. Box 750832 Petaluma, CA 94975 UNITED STATES		

Correspondence information	David Baxes President Sensible Foods, LLC P.O. Box 750832 Petaluma, CA 94975 UNITED STATES db@sensiblefoods.com, jr@sensiblefoods.com Phone:4156061689
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Registration Subject to Cancellation

Registration No	3195083	Registration date	01/02/2007
Registrant	World Gourmet Marketing LLC 49 Lincoln Road Butler, NJ 07405 UNITED STATES		

Goods/Services Subject to Cancellation

Class 029. First Use: 2003/07/01 First Use In Commerce: 2003/07/01 All goods and services in the class are cancelled, namely: PROTEIN-BASED NUTRIENT-DENSE SNACK BARS; SOY-BASED FOOD BARS; SOY-BASED SNACK FOODS; POTATO-BASED SNACK FOODS; SNACK FOOD DIPS; POTATO CHIPS; SOY CHIPS; SOY NUTS
Class 030. First Use: 2003/07/01 First Use In Commerce: 2003/07/01 All goods and services in the class are cancelled, namely: CRACKERS; COOKIES; CORN CHIPS; TORTILLA CHIPS; BAKERY GOODS; READY TO EAT, CEREAL DERIVED FOOD BARS; GRANOLA-BASED SNACK BARS; CHOCOLATE-BASED READY TO EAT FOOD BARS

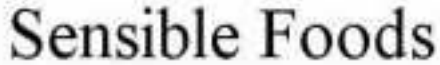
Grounds for Cancellation

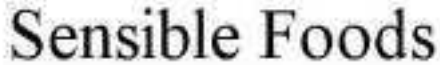
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	progressive encroachment

Related Proceedings	91195262
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Marks Cited by Petitioner as Basis for Cancellation


U.S. Registration	3252283	Application Date	10/14/2004
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No.			
Registration Date	06/12/2007	Foreign Priority Date	NONE
Word Mark	SENSIBLE FOODS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2006/10/26 First Use In Commerce: 2006/10/26 Magazines, leaflets, brochures, and newsletters featuring food, health and nutrition; catalogs featuring food, snacks, nutritional supplements, and general nutritional products		

U.S. Registration No.	3024683	Application Date	04/15/2004
Registration Date	12/06/2005	Foreign Priority Date	NONE
Word Mark	SENSIBLE FOODS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1996/12/17 First Use In Commerce: 1997/04/08 Dried Fruits, Dried Vegetables		

U.S. Registration No.	2861273	Application Date	05/01/2002
Registration Date	07/06/2004	Foreign Priority Date	NONE
Word Mark	SENSIBLE FOODS		

Design Mark	
Description of Mark	The design portion of the mark depicts an ear of corn, a strawberry, two blueberries, a mango, a pineapple and a cherry.
Goods/Services	Class 029. First use: First Use: 1996/12/17 First Use In Commerce: 1997/04/08 Dried fruit snacks

U.S. Registration No.	3383121	Application Date	03/02/2006
Registration Date	02/12/2008	Foreign Priority Date	NONE
Word Mark	SNACKS MADE SENSIBLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2006/02/01 First Use In Commerce: 2006/06/01 Dehydrated fruit snacks; Dried fruit mixes; Dried fruits; Dried soybeans; Dried vegetables; Fruit-based snack food; Vegetable-based snack foods		

U.S. Registration No.	3793526	Application Date	05/11/2007
Registration Date	05/25/2010	Foreign Priority Date	NONE
Word Mark	SENSIBLE BABY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 2007/05/11 First Use In Commerce: 2010/03/02 Dried fruits; dried vegetables; processed fruits; processed vegetables

Attachments	78499792#TMSN.jpeg (1 page)(bytes) 78402771#TMSN.jpeg (1 page)(bytes) 78125557#TMSN.gif (1 page)(bytes) 78827662#TMSN.jpeg (1 page)(bytes) 77178357#TMSN.jpeg (1 page)(bytes) Amnd Mtn Amnd Cncl SFoods.pdf (8 pages)(264620 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/jcr888/
Name	john rarick
Date	08/02/2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial Nos. 77/833,401 and 77/833,386 for the mark
“SENSIBLE PORTIONS” Published in the Official Gazette of February 16, 2010.

Applicant : World Gourmet Marketing, LLC
Mark : SENSIBLE PORTIONS
Serial No. : 77/833,401 & 77/833,386
Filed : September 23, 2009

SENSIBLE FOODS, LLC)	
)	Opposition No. 91195262
Opposer/Petitioner)	
)	
v.)	
)	
WORLD GOURMET MARKETING, LLC &)	
WORLD GOURMET ACQUISITION)	
Applicants)	
)	
)	

AMENDED AS PER BOARD ORDER DATED JULY 23, 2010

MOTION TO AMEND OPPOSITION NO. 91195262 AS PER FEDERAL RULES OF
CIVIL PROCEDURE 15 (a)(1)(A) AND TRADEMARK RULES §§ 315 AND 507

As per Board Order dated, July 23, 2010, the Opposer hereby files this amended Petition
to Cancel.

The Opposer hereby requests that the Board establish a single opposition and cancellation
proceeding under Opposition No. 91195262 and amend Opposition No. 91195262 with this
petition for cancellation of Registration No. 3,915,083 for the mark “SENSIBLE PORTIONS.”

The Board, may order, upon its own initiative, the consolidation of the above referenced
cases which is meant to ensure consistent treatment of related proceedings. See Fed. R. Civ. P.
42(a) and TBMP § 511 (citations omitted). Here, the Opposer/Petitioner, Sensible Foods, LLC

seeks to combine this petition for cancellation of the mark “SENSIBLE PORTIONS” under Registration No. 3,915,083 which involves the same parties, marks and issues as Opposition No. 91195262. The combination will consolidate proceedings that will save time, effort and expense for all parties.

Opposer, Sensible Foods, LLC, a California Limited Liability Company, with a business address of P.O. Box 750832, Petaluma, CA, 94975, United States, organized under the laws of the state of California, believes that it has been and is being damaged by Principal Registration No. 3,195,083 for the mark SENSIBLE PORTIONS owned by World Gourmet Marketing, LLC, a limited liability company with its principle place of business at 49 Lincoln Road, Butler, New Jersey, 07405, United States, organized in New Jersey and World Gourmet Acquisition, LLC, a limited liability company with an alleged principle place of business of 2870 Yellow Goose Rd. Lancaster, Pennsylvania 17601, organized in Pennsylvania, hereby petitions to cancel the same pursuant to 15. U.S.C §§ 1064 and 1052.

As grounds in support of the petition to cancellation, Opposer asserts as follows:

29. Continued from Notice of Opposition, with deletion of item No. 11 (reference of assignment to FCC (introduction), and paragraph 11.
30. On or about June 22, 2007, World Gourmet Marketing, LLC filed Application No. 77/210,120 for the mark “SENSIBLE SNACKS.”
31. On September 21, 2007 the examining attorney mailed an office action memo to Alison P. Grossman attorney for applicant World Gourmet Marketing, LLC regarding Application No. 77/210120 for the mark “SENSIBLE SNACKS” stating among other findings:
“Registration Refusal –Likelihood of Confusion 2(d): The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), because the

applicant's mark, when used on or in connection with the identified goods/services, so resembles the marks in U.S. Registration Nos. 3,024,683 and 2,861,273 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP §§1207.01 et seq."

31.1. The Opposer/Petitioner is the owner of both Registration Nos. 3,024,683 and 2,861,273 for the mark "SENSIBLE FOODS" and "SENSIBLE FOODS" with a design.

32. No. 32 continued: "Registration Refusal -Similarity of Marks: The applicant's mark is SENSIBLE SNACKS. The registrant's marks are SENSIBLE FOODS and SENSIBLE FOODS with a design. The marks are similar in sound, appearance and commercial impression because they each contain the dominant term SENSIBLE. Further, the terms SNACKS and FOODS convey a highly similar commercial impression."

32.1. The Opposer/Petitioner is the owner of both Registration Nos. 3,024,683 and 2,861,273 for the mark SENSIBLE FOODS and SENSIBLE FOODS with a design.

33. No. 33 continued: "Registration Refusal -Similarity of Goods/Services: The applicant's goods/services are "protein-based nutrient-dense snack bars; soy-based food bars; soy-based snack foods; potato-based snack foods; snack food dips; potato chips; soy chips; soy nuts; vegetable-based snack foods; pellet snacks" and "crackers; cookies; corn chips; tortilla chips; bakery goods; ready to eat, cereal-derived food bars; granola-based snack bars; chocolate-based ready to eat food bars; grain-based chips; cheese flavored snacks, namely, cheese curls; corn-based snack foods; popcorn; caramel popcorn; glazed popcorn; pita chips". The registrant's goods are Dried Fruits, Dried Vegetables and Dried fruit snacks respectively. The goods are related because these goods are all snack

foods which would be marketed and sold to similar consumers using the same channels of trade.”

33.1. The Opposer/Petitioner is the owner of both Registration Nos. 3,024,683 and 2,861,273 for the mark SENSIBLE FOODS and SENSIBLE FOODS with a design.

34. On April 28, 2008 the Commissioner for Trademarks mailed an Abandonment Notice for the mark “SENSIBLE SNACKS” under Application No. 77/210120 stating in part: “The trademark application identified below was abandoned in full because a response to the Office Action mailed on Sep 21, 2007 was not received within the 6-month response period.”

35. The Description of Goods under Application No. 78/596,051 for the mark SENSIBLE PORTIONS consists of a sub-set of the Description of Goods under Application No. 77/210,120 for the mark SENSIBLE SNACKS, which was rejected by the Commissioner of Trademarks and abandoned by the Applicant; namely: IC:29 Protein-based, nutrient-based snack bars; soy-based food bars; soy-based snack foods; potato-based snack foods; snack-food dips; potato chips; soy chips; soy nuts. IC:30 Crackers; cookies corn chips; tortilla chips; bakery goods; ready to eat, cereal-derived food bars; granola-based snack bars; chocolate-based, ready to eat food bars.

36. The filing date of this amendment and petition for cancellation, August 2, 2010, is within five years of the registration date for Applicant’s Trademark Registration No. 3,195,083 the subject of Application No. 77/596,051, which was January 2, 2007.

37. As per paragraphs 30-34, the examining attorney should have rejected Application No. 77/596,051 for the same reasons under the same authorities cited in the September 21, 2007 Office Action.
38. The applicant has a legal duty to select a mark which is totally dissimilar to trademarks already being used.
39. Opposer has sold fruit and vegetable-based snack foods under the mark SENSIBLE FOODS since at least as early as April 8, 1997, well before any date upon which Applicant may rely; especially in light of the discrepancy between Applicant's "intent-to-use" date of March 28, 2005 for Application No. 78/596,051 and its claimed date of first use of July 01, 2003, for the same mark and the same or similar goods. Opposer's use of the SENSIBLE FOODS mark has been continuous.
40. The filing dates of Opposer's federal trademark applications that matured into the SENSIBLE FOODS registrations predate either July 1, 2003 or March 28, 2005 the alleged date of first use and the filing date; respectively, for Application No. 78/596,051, which matured into Registration No. 3,195,083 for the mark SENSIBLE PORTIONS.
41. Since prior to either July 1, 2003 or March 28, 2005, the alleged date of first use and the filing date for Application No. 78/596,051 that matured into Registration No. 3,195,083 for the mark SENSIBLE PORTIONS, Opposer has widely advertised and promoted the SENSIBLE FOODS marks in connection with Opposer's goods, with the result that Opposer has built-up a valuable reputation and tremendous goodwill in the SENSIBLE FOODS Marks belonging exclusively to Opposer.
42. As per paragraphs 30 through 34, Applicant's mark SENSIBLE PORTIONS, so resembles Opposer's SENSIBLE FOODS Marks, as to already have caused confusion as

used in connection with Applicant's Goods and to be likely, when used in connection with the Applicant's Goods, to continue to cause confusion, to cause mistake, or to deceive. Consumers have believed, will continue to incorrectly believe, and are likely to believe in the future that Applicant's use of SENSIBLE PORTIONS in connection with Applicant's Goods is in some way associated or connected with or sponsored, authorized or approved by Opposer. Any objection or fault found with Applicant's Goods offered and provided under the mark SENSIBLE PORTIONS would reflect upon and seriously injure the reputation that Opposer has established in the SENSIBLE FOODS Marks.

43. As per the above, Pursuant to 15 U.S.C §§ 1064 and 1052, Opposer believes that it has been and will continue to be damaged by the continued Registration of SENSIBLE PORTIONS in connection with Applicant's goods in Int. Classes 29 and 30.

44. Applicant's mark SENSIBLE PORTIONS is registered for use in connection with goods in Int. Classes 29 and 30 that are related to Opposer's Goods and are also among the natural scope of expansion of Opposer's Goods.

WHEREFORE, the Opposer/Petitioner, Sensible Foods, LLC, prays that Opposition No. 91195262 be amended to include this petition for cancellation of Registration No. 3,195,083 for the mark SENSIBLE PORTIONS, that Registration No. 3,195,083 be cancelled and for such other relief which the Board deems proper.

Date August 2, 2010

Appearing *per se*:

Respectfully submitted,

By: 

John Rarick
Vice President
Sensible Foods, LLC
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94975
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415.606.1689

CERTIFICATE OF SERVICE/MAILING

I HEREBY CERTIFY that on this 2nd day of August, 2010, I caused to be served via the United States Patent and Trademark Office's Electronic System for Trademark Trials and Appeals (ESSTA) and via the US Postal Service, postage prepaid, the following:

AMENDED as per BOARD ORDER: MOTION TO AMEND OPPOSITION NO. 91195262 AS PER FEDERAL RULES OF CIVIL PROCEDURE 15 (a)(1)(A) AND TRADEMARK RULES §§ 315 AND 507

TO:

Applicant and Co-Assignor
World Gourmet Marketing, LLC, C/O
Vanessa A. Ignacio, Esq.
Lowenstein Sandler PC
65 Livingston Ave, Ste. 2
Roseland, NJ 07068-1791

John Rarick

